



COMPTROLLER  
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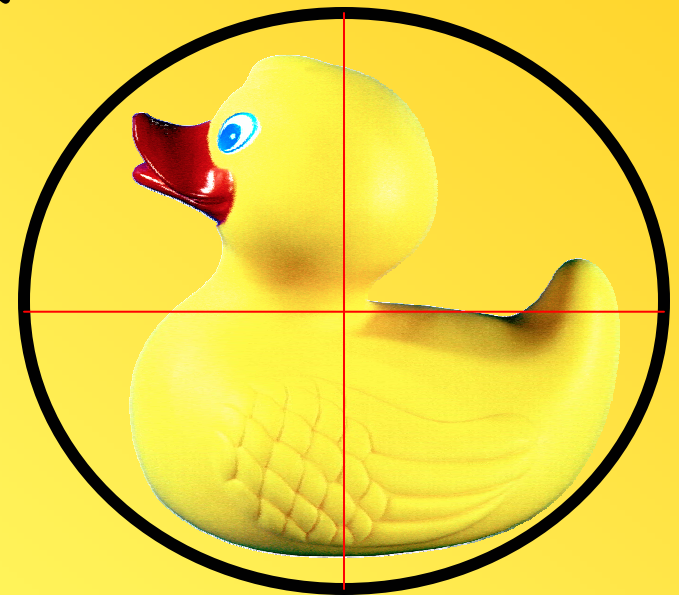
# Corporate Tax Sheltering in Maryland

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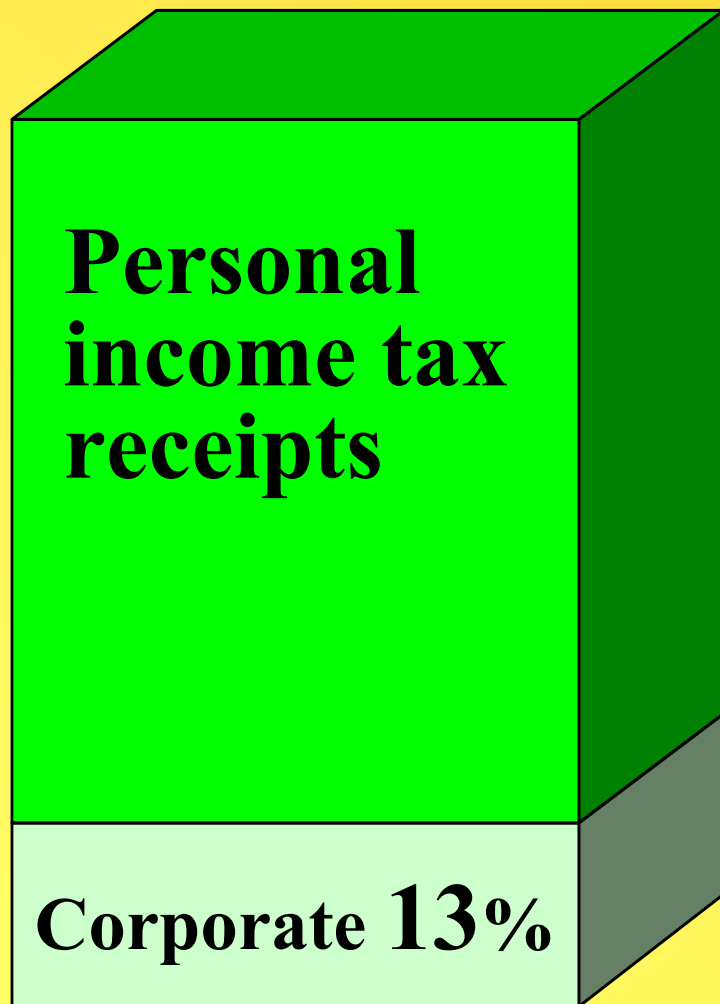
*Stephen M. Cordi  
Deputy Comptroller  
State of Maryland  
July 31, 2003*

# Maryland = Sitting Duck

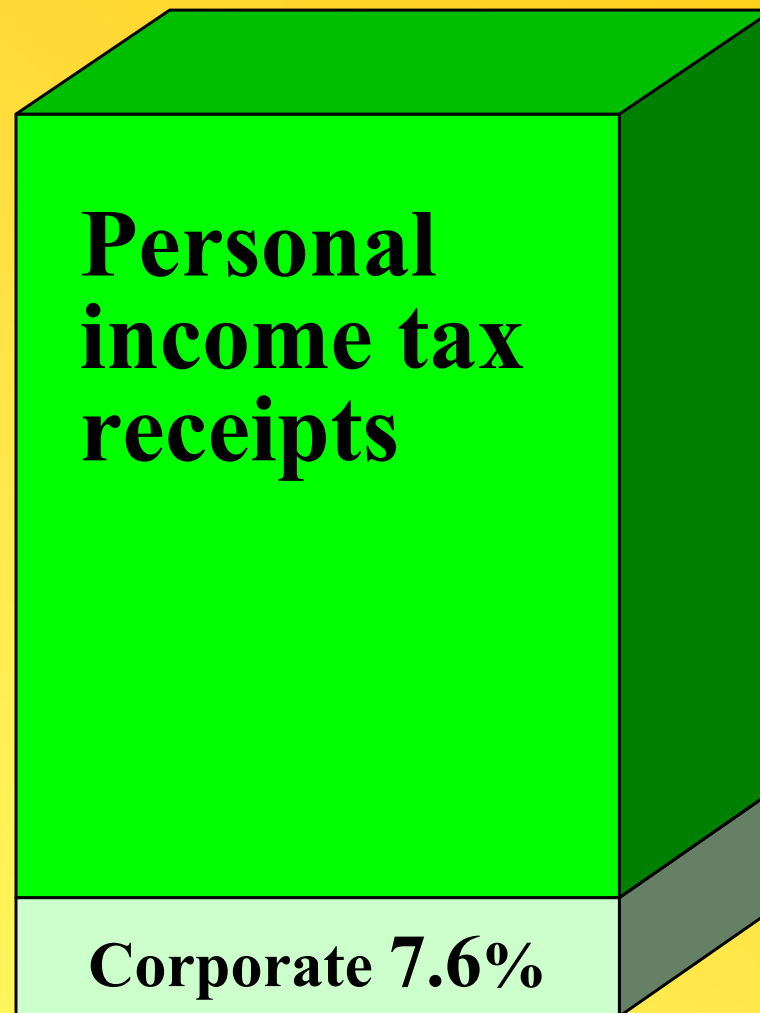
- Separate entity state.
- Three-factor apportionment.
- Double-weighted sales.
- Single sales factor for manufacturers.
- No throwback rule.
- No Section 482 authority.



# Corporate Income Tax



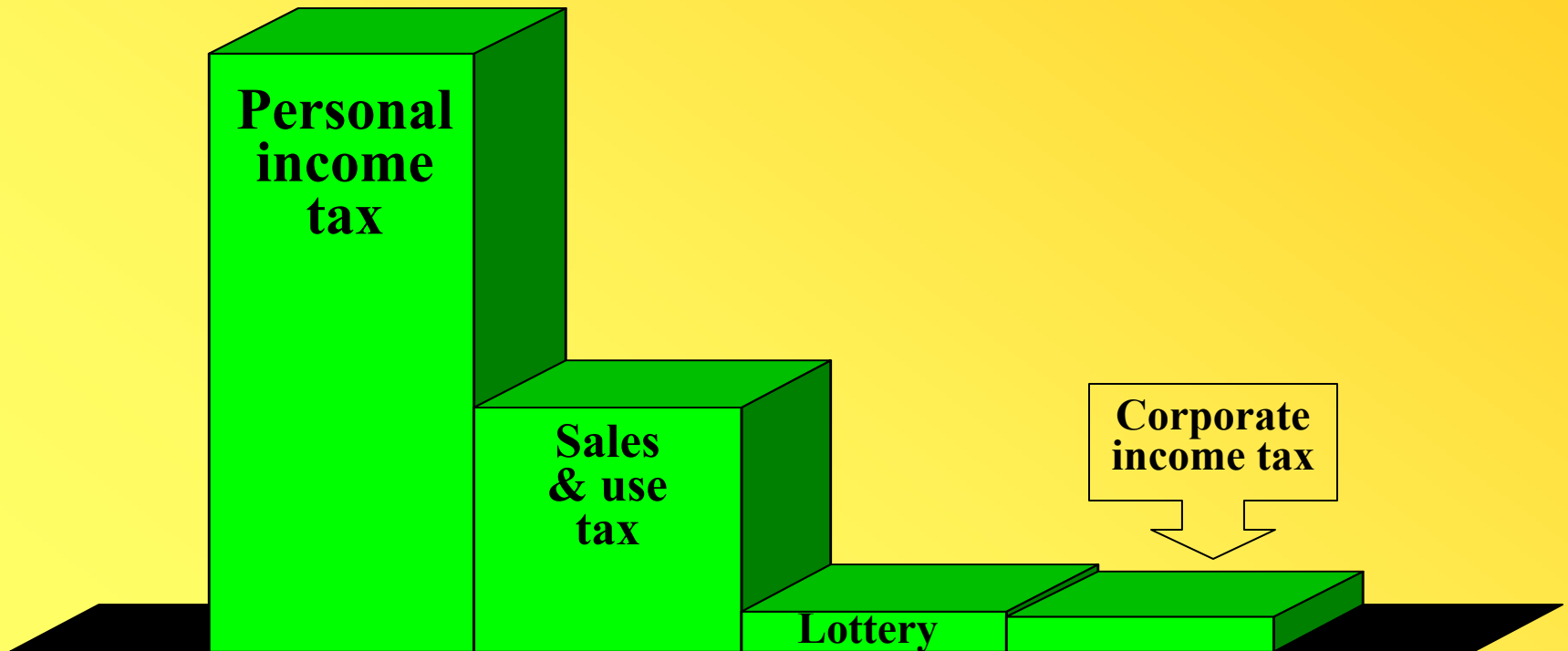
1980



2002

# Corporate Income Tax *cont'd*

- Corporate income tax produced just \$379 million in 2002 - \$62 million less than the Maryland Lottery.



# *Geoffrey* Sends Signal

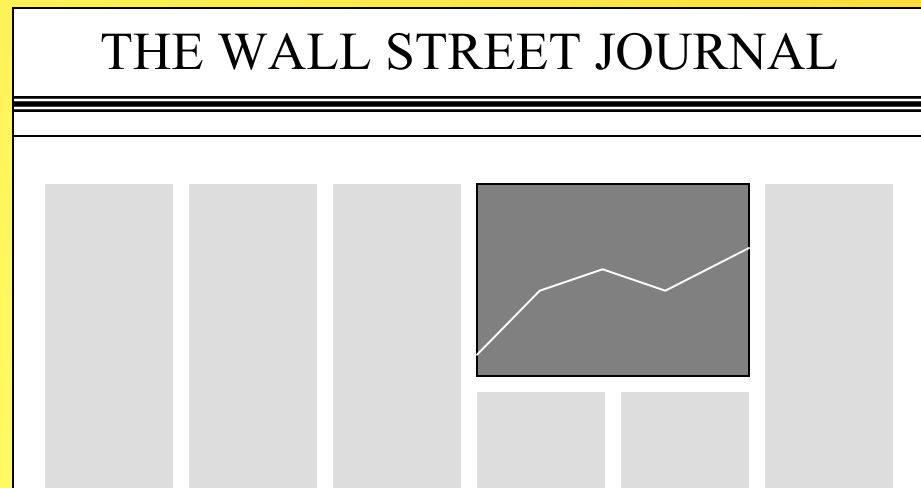
- *Geoffrey* case decision in 1993 alerted Maryland Comptroller's Office to the tax avoidance problem.
  - ✓ Taxpayers tried to hide the issue.
  - ✓ We learned that stagnant corporate income tax receipts were **NOT** linked solely to the economy.

# First Assessments

- First assessments levied against SYL, Inc., and Crown, Cork and Seal (Delaware, Inc.).
- Assessments struck down by Maryland Tax Court on Commerce Clause grounds and affirmed at state circuit court level.
- Court of Appeals took the case from Maryland Court of Special Appeals.

# Reaction

- Little interest from policymakers until August 2002, when *The Wall Street Journal* revealed how widespread Delaware holding company tax avoidance had become.



# 2003 Legislative Session

- Key legislation required add-back of deductions for payments for intangibles and interest to controlled entities.
- Combined reporting in the out years.





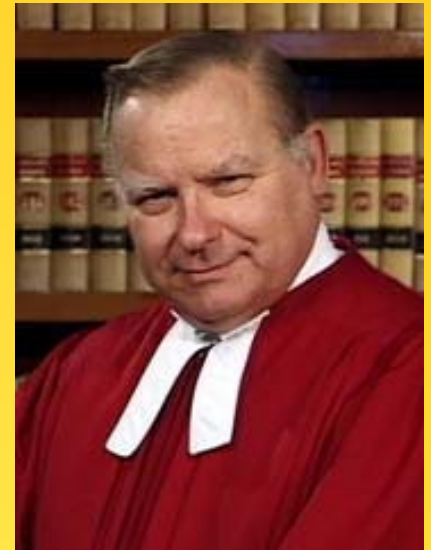
# 2003 Legislative Session *cont'd*

- Combined reporting was dropped after fierce resistance.
- Add-back survived, along with throwback rule and 10% corporate income tax surcharge.
- Entire package later vetoed by the Governor.



# Court of Appeals Upholds Assessments

- Court of Appeals reversed lower courts on June 9 and reinstated assessments.
  - ✓ Licensing of intangibles created substantial nexus.
  - ✓ Holding companies income should be apportioned to Maryland.



# Next Stop: U.S. Supreme Court

- SYL's petition to U.S. Supreme Court due by early September.
- Crown Cork and Seal's petition to come later.
- Denial expected.



# Current Caseload



**38** court cases.  
**\$66.8 million**  
in tax, penalty  
& interest.



Subsequent  
liabilities  
**\$94  
million.**



**20+** cases in  
internal appeal.  
**\$27.4 million**  
in tax, penalty  
& interest.



**112** other  
cases  
confirmed  
by audit.

**\$400 million**



# Vetoed Add-Back Provision

- Legislated add-back provision would have eliminated factual issues going forward and added powerful incentive to resolve cases in the pipeline.



# What We're Seeing

- More window-dressing.
- More complex corporate structures.
- More subtle tax avoidance techniques.



